

20th June, 1947.

UNITED NATIONS WAR CRIMES COMMISSION

hor. 3.

THE TRIAL OF
KRIMINALSEKRETÄR WILLIE AUGUST KESTING, AND
INTERPRETER NILS PETER BERNHARD HJELMBERG

Report by the Norwegian Representative,

J. Aars Rynning.

Trial by the Gulatings Lagmannsrett, March, 1946.
Trial by the Supreme Court of Norway, July, 1946.

Public Prosecutor: Statsadvokat Harald Sund,

Counsel for the Defence: Høyesterettsadvokat Magne Schiødt.

Charge 1 - Murder.

Charge 2 - Brutal torture.

Indictment:

I. Willie August Kesting, (b. 28th January, 1908) - K.s.

Kriminalsekretär Kesting was charged by the Director of Public Prosecutions with having committed war crimes which were in violation of: # 3 of the Provisional Decree of 4th May, 1945, cf. # 1, cf. # 223, 231, 229 thereof, cf. # 232 and 228 of the Civil Criminal Code, cf. the Law of 6th July, 1946.

Statement of Facts

Between May, 1943 and April, 1945, K.s. Kesting himself ill-treated or was present at the ill-treatment of 17 Norwegians, two of whom, Nils Kollen and Reidar Olsen, died as a result of the torture, and several others are still suffering from the after-effects of the interrogations. Kesting was notorious for being a sadist and the methods he used during interrogations were among the most brutal ever carried out by any German official in Norway. In addition to the more commonly used methods of "verschärfte Vernehmung", Kesting used to handcuff his victims, tie their legs and then suspend them from the ceiling by the manacles for hours at a time. All of his victims, among whom was one woman, had

to be carried back to their cells completely shattered and exhausted. They all suffered from open sores and many of them from internal bleeding. One of the prisoners had a toenail pulled out by Kesting. The interrogations which lasted for several hours at a time, were repeated as soon as the prisoners had somewhat recovered. If Kesting did not achieve satisfactory results by physical torture, he resorted to mental torture by threatening his victims by shooting or by having their families tortured and deported.

II. Nils Peter Bernhard Hjeltnberg (b. 3rd January, 1923) - Danish citizen; Interpreter and auxiliary policeman

Hjeltnberg was charged by the Director of Public Prosecutions with having committed war crimes which were in violation of: # 3 of the Provisional Decree of 4th May, 1945, cf. # 1, cf. # 233, 231, 229, 232, 228 of the Civil Criminal Code, cf. the Law of 6th July, 1945.

Statement of Facts

Between November, 1944, and March, 1945, Hjeltnberg took part in the ill-treatment of eight Norwegians, two of whom, Nils Kollen and Reidar Olsen died as a result of the torture.

Verdict

Both defendants were acquitted of the wilful murder of Nils Kollen but found guilty of the murder of Reidar Olsen. Both defendants were found guilty of all the instances of torture and ill-treatment in the indictment.

Sentence by the Gulatings Lagmannsrett of 18th March, 1946

Defendant Kesting was sentenced to death by shooting.

Defendant Hjeltnberg was sentenced to life imprisonment (four judges voted for the death sentence).

Notes on the sentence by the Lagmannsrett

The Court established that the methods of "verschärfte Vernehmung" referred to in the indictment, were carried out by the German authorities in order to extort information from prisoners, both regarding their own patriotic activities and the activities of their associates. The Germans used the information thus gained to stem the activities of all underground organisations. There is no doubt that the German occupation authorities were acting contrary to international law when applying "verschärfte Vernehmung" during their interrogations, as their victims were, according to international law, entitled to withhold information harmful to their country and would, according to Norwegian law, have been guilty of treason if they had given information without duress. Neither of the defendants could have been in doubt as to the heinous character of their acts of moral and physical torture and as to the fact that they were acting at variance with international law.

According to witnesses, Kesting took sadistic pleasure in torturing prisoners or at least being present when they were being tortured by others. It was established that Kesting always applied to his superiors for blank forms for "verschärfte Vernehmung", the ways and means being entirely left to him. It was pointed out by witnesses that Kesting's predecessor had never resorted to torture during his interrogations.

In considering the degree of punishment, the Court found it necessary not only to take into account the acts of torture themselves but also the consequences of the interrogations, which had led to the imprisonment and deportation of those betrayed by the tortured prisoners.

Even considering the fact that Kesting as a German citizen had acted in the interests of his country, the Court could not see its way to allow a mitigation of punishment.

Appeal

Defendant Kesting appealed to the Supreme Court pleading:

1. That the Court was invalid. He maintained that one of the judges was not legally qualified to act as such as he himself had been put through "verschärfte Vernehmung" in his time, though not by the defendants.
2. That the Lagmannsrett had wrongly judged the proof and evidence against him.
3. That he was not punishable according to international law as "verschärfte Vernehmung" in the circumstances could not be regarded as at variance with international law.
4. That he had acted on superior orders.
5. That the degree of punishment was too severe.

On the defendant Hjeltnberg the Director of Public Prosecutions asked the Supreme Court to pass the death sentence because of the severity of his crimes.

Sentence by the Supreme Court

The Supreme Court rejected defendant Kesting's appeal and sentenced defendant Hjeltnberg to death.

Notes on the Sentence by the Supreme Court.

When considering point 1 of Kesting's appeal, the Court was satisfied by an explanation given by the President of the Lagmannsrett in which he stated that the question of the qualification of the judge in question had been raised by the Court ex officio but as it was found that he had not been ill-treated by either of the defendants he could not be regarded as disqualified from taking part in the judgment of the case in hand. The Supreme Court found, moreover, that as the death sentence had been unanimous, the vote of this particular judge was not decisive for the conclusion and, therefore, rejected this point of the appeal.

Since, according to the Norwegian law of criminal procedure, the sentence of the Lagmannsrett cannot be appealed against on questions of fact, point 2 of Kesting's appeal could not be considered.

Regarding points 3, 4 and 5 of the appeal, the Supreme Court was in full agreement with the reasons given by the Lagmannsrett.

As to defendant Hjeltnberg, the Supreme Court agreed with the view put forward by the Prosecution. The Court found that his crimes were of such an atrocious character that they had deserved the maximum penalty applicable.